

Notice of Allowability

Application No.

10/668,489

Examiner

Andre' C. Stevenson

Applicant(s)

ARNO, JOSE I.

Art Unit

2812

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to arguments filed on 01/20/06.
2. ☒ The allowed claim(s) is/are 1-36.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 01/20/06, 12/15/04
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____.
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☒ Other See Continuation Sheet.


MICHAEL LEBENTRITT
SUPERVISORY PATENT EXAMINER

Continuation of Attachment(s) 9. Other: IDS's submitted by the applicant; 01/12/04.

Allowance

Election/Restrictions

Applicant's election with traverse of Group I in the reply filed on 09/05/05 is acknowledged. The traversal is on the ground(s) that it is apparent from this provision of the MPEP that the subject matter of Group I representative of claim 1 and Group II representative claim #33 is not "independent" within the meaning of 35 USC 121 in the representative claims, and that therefore Groups I and II are NOT properly restricted. In other words, the subject matter of claim 1 and claim 33 CANNOT BE CHARACTERIZED as being unconnected in design, operation or effect (MPEP Section 802.01). The restriction requirement applied against Group I and II therefore is improper. This is not found persuasive because in the instant case, the system claimed by Group I can be used in a materially different process of using the product, such as a process which generates an output from the thermopile detector, indicative of a parameter other than concentration of a desired component of a material.

The requirement is still deemed proper and is therefore made FINAL.

Rejoining of Claims

Claims # 1 through 32 are directed to an allowable product. Pursuant to the procedures set forth in MPEP § 821.04(B), claims #33 through 36, directed to the process of making or using an allowable product, previously withdrawn from consideration as a result of a restriction requirement, are hereby rejoined and fully examined for patentability under 37 CFR 1.104.

Because all claims previously withdrawn from consideration under 37 CFR 1.142 have been rejoined, the restriction requirement as set forth in the Office action mailed on 08/05/05 is

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hereby withdrawn. In view of the withdrawal of the restriction requirement as to the rejoined inventions, applicant(s) are advised that if any claims including all the limitations of an allowable product claim or rejoined process claim are presented in a continuation or divisional application, such claims may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once the restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 01//20/06, 12//15/04, and 01//12/04, were filed before the first action of the merits. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Reasons for Allowance

The following is an examiner's statement of reasons for allowance: While the prior art teaches, in a method for using infrared radiation, wherein at least one infrared spectrally selective element arranged between the radiation source and the detector for spectral selection of the infrared radiation corresponding to specific spectral characteristics of the gas, a volume of gas that is arranged between the radiation source and the detector, optics arranged to guide infrared

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radiation from the radiation source via the spectrally selective element onto the detector through the volume of gas, and an electronics unit for registration, amplification, treatment and/or presentation of such electrical signals as result when the infrared radiation illuminates the detector through the gas via the spectrally selective element, it fails to teach either alone or in combination, the using of said thermopile detection readings to control one or more process conditions in and /or affecting the semiconductor process system.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Claims #1 through 36 are allowed.

Claim #1

- Receive the output signals of the thermopile detector and to responsively control one or more process conditions in and/or affecting the semiconductor for process system.

Claim #18

- Receive the output signals of the thermopile detector and to responsively control one or more process conditions in and/or affecting the semiconductor for process system.

Claim #23

- Receive the output signals of the thermopile detector and to responsively control one or more process conditions in and/or affecting the semiconductor for process system.

Claim #32

- Receive the output signals of the thermopile detector and to responsively control one or more process conditions in and/or affecting the semiconductor for process system.

Claim #33

- Generating an output from said thermopile detector indicative of concentration of a desired component of said material, and controlling one or more process conditions in and/or affecting the semiconductor for process system, in response to said output.

Claim #34

- Generating an output from said thermopile detector indicative of concentration of a desired component of said material, and controlling one or more process conditions in and/or affecting the semiconductor for process system, in response to said output.

Claim #35

- Generating an output from said thermopile detector indicative of concentration of a desired component of said material, and controlling one or more process conditions in and/or affecting the semiconductor for process system, in response to said output.

Claim #36

- Generating an output from said thermopile detector indicative of concentration of a desired component of said material, and controlling one or more process conditions in and/or affecting the semiconductor for process system, in response to said output.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866 – 217 – 9197 (toll-free).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andre C. Stevenson whose telephone number is (571) 272 1683. The examiner can normally be reached on Monday through Friday from 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Lebentritt, can be reached on (571) 272 1873. The fax phone number for the organization where this application or proceeding is assigned is (703) 308 7724.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308 1782. Also, the proceeding number can be used to fax information;

- **(703) 872-9306**

Andre C. Stevenson
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03/13/06


MICHAEL LEBENTRITT
SUPERVISORY PATENT EXAMINER